

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AVOCENT REDMOND CORP.,

Plaintiffs,

v.

ROSE ELECTRONICS, INC., et al.,

Defendants.

No. C06-1711MJP

ORDER STRIKING AVOCENT'S  
MOTION FOR A PROTECTIVE  
ORDER

This matter comes before the Court on Avocent's motion for a protective order regarding Rule 45 subpoenas served on its trial counsel by Defendant Rose Electronics. (Dkt. No. 89.) The Court strikes the motion because Avocent failed to confer with Rose before bringing its motion. Federal Rule of Civil Procedure 26(c) makes clear that a party seeking a protective order must certify that the movant has "in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." In this court, the conference requirement, whether mandated under Federal Rule 37(a) or 26(c), is not fulfilled until the parties have had a face-to-face meeting or a telephonic conference. Cf. Local Civil Rule 37(a)(2)(A) (providing that for motions to compel, "[a] good faith effort to confer with a party or person not making a disclosure or discovery requires a face-to-face meeting or a telephonic conference"). Here, Avocent's counsel did not meet with Rose's counsel face-to-face or over the phone, but left Rose's counsel a voice mail message and sent him an e-mail a few hours before filing Avocent's motion for a protective order. (Jackson Decl. ¶¶ 2, 3, 13.) These forms of communication do not satisfy the Court's meet-and-confer requirement. Because Avocent failed to properly confer before filing its motion, the Court STRIKES the motion.

1 The parties are directed to satisfy the meet-and-confer requirement by meeting in person or  
2 through a telephonic conference within three (3) judicial days of this order. After the parties have  
3 conferred, they may present to the Court, in the unified format outlined at Local Civil Rule  
4 37(a)(2)(B), those issues regarding Avocent's motion for a protective order that remain unresolved.

5 The clerk is directed to send a copy of this order to all counsel of record.

6 Dated this 6<sup>th</sup> day of June, 2007.

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9 Marsha J. Pechman  
10 United States District Judge  
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